

Authorised Version

Environment Protection Act 2017

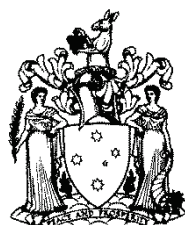
No. 51 of 2017

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Authorised Version



Victoria

Environment Protection Act 2017[†]

No. 51 of 2017

[Assented to 24 October 2017]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to provide for the continuation of the Environment Protection Authority; and
- (b) to specify a new objective of the Environment Protection Authority; and
- (c) to provide for a new governance structure of the continued Environment Protection Authority; and

- (d) to provide for the Governing Board of the Environment Protection Authority; and
- (e) to make consequential amendments to the **Environment Protection Act 1970** and the **Public Administration Act 2004**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2018, it comes into operation on that day.

3 Definitions

- (1) In this Act—

advisory committee means a committee established under section 20;

Authority means the Environment Protection Authority continued in existence by section 5(1);

Chairperson means the Chairperson of the Governing Board appointed under section 11;

chief environmental scientist means the chief environmental scientist appointed under section 22;

chief executive officer means the chief executive officer appointed under section 21;

commencement day means the day section 28 comes into operation;

deputy Chairperson means the deputy Chairperson of the Governing Board appointed under section 11;

Governing Board means the Environment Protection Authority Governing Board under section 9.

- (2) Unless inconsistent with the context or subject matter, words and expressions defined in the **Environment Protection Act 1970** have the same meaning in this Act.

4 Construction of Act

- (1) This Act is to be read as if it formed part of the **Environment Protection Act 1970**.
- (2) If there is an inconsistency between this Act and the **Environment Protection Act 1970**, this Act prevails to the extent of the inconsistency.

Part 2—Environment Protection Authority

5 Environment Protection Authority

- (1) The Environment Protection Authority established under section 5(1) of the **Environment Protection Act 1970** as in force immediately before the commencement day continues in existence in accordance with this Act.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the official seal of the Authority affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The official seal of the Authority must—
 - (a) be kept in such custody as the Authority determines; and
 - (b) not be used except as authorised by the Authority.
- (5) The Authority continues to be the same body despite the re-constitution of the body by this Act.

6 Objective of the Authority

- (1) The objective of the Authority is to protect human health and the environment by reducing the harmful effects of pollution and waste.

- (2) The Authority must exercise its powers and perform its duties and functions under this Act, the **Environment Protection Act 1970** or any other Act for the purposes of achieving the objective set out in subsection (1) to the extent that it is practicable to do so having regard to the nature of the power being exercised or the duty or function being performed.

7 Powers, duties and functions of the Authority

The Authority has the following powers, duties and functions—

- (a) administering this Act and the **Environment Protection Act 1970** and any regulations and Orders made under those Acts;
- (b) any power, duty and function conferred on the Authority by this Act, the **Environment Protection Act 1970** or any other Act.

8 Staff

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any persons that are necessary for the purposes of performing the duties and functions of the Authority.
- (2) The Authority may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

9 Environment Protection Authority Governing Board

- (1) The Authority has a governing body known as the Environment Protection Authority Governing Board.
- (2) The Governor in Council must appoint, on the recommendation of the Minister, not less than 5 and not more than 9 persons to be members of the Governing Board.

- (3) In recommending a person for appointment as a member of the Governing Board, the Minister must—
- (a) ensure that at least one of the persons recommended has qualifications or experience in science or engineering; and
 - (b) ensure that at least one of the persons recommended is a person nominated by the Minister responsible for the administration of the **Public Health and Wellbeing Act 2008** who has qualifications or experience in health; and
 - (c) ensure that collectively the persons recommended have skills, knowledge or experience in relation to the following—
 - (i) environment protection or regulation;
 - (ii) regulation of industry;
 - (iii) local government;
 - (iv) public administration or governance;
 - (v) finance or accounting;
 - (vi) legal practice.

10 Functions of the Governing Board

- (1) The Governing Board—
- (a) is responsible for the governance, strategic planning and risk management of the Authority; and
 - (b) is responsible for pursuing the objective of the Authority; and
 - (c) may perform the duties and functions and exercise the powers of the Authority.

- (2) All acts and things done in the name of, or on behalf of, the Authority by or with the authority of the Governing Board are taken to have been done by the Authority.

11 Chairperson and deputy Chairperson

- (1) The Governor in Council, on the recommendation of the Minister, must appoint—
- (a) one member of the Governing Board to be the Chairperson; and
 - (b) one member of the Governing Board to be the deputy Chairperson.
- (2) A person appointed as Chairperson or deputy Chairperson of the Governing Board ceases to hold that office on ceasing to be a member of the Governing Board.

12 Conditions of office for Governing Board members

- (1) A member of the Governing Board—
- (a) holds office for the period, not exceeding 5 years, specified in the instrument of appointment; and
 - (b) holds office on the terms and conditions (including remuneration and allowances) specified in the instrument of appointment; and
 - (c) is eligible for reappointment for one further term of office; and
 - (d) in respect of the office of member of the Governing Board, is subject to the **Public Administration Act 2004** (other than Part 3 of that Act).
- (2) An instrument of appointment may specify other terms and conditions of appointment not inconsistent with this Act.

13 Vacancies, resignations and removal from office

- (1) The office of a member of the Governing Board becomes vacant if that member—
 - (a) becomes an insolvent under administration;
or
 - (b) is convicted or found guilty of—
 - (i) an indictable offence; or
 - (ii) an offence that, if committed in Victoria, would be an indictable offence; or
 - (c) is absent from 2 consecutive meetings of the Governing Board without the approval of the Governing Board; or
 - (d) is removed from office; or
 - (e) retires or resigns; or
 - (f) dies.
- (2) If the office of a member of the Governing Board becomes vacant before the end of the term of office, the Governor in Council may appoint a person in accordance with section 14 to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.
- (3) If the office of a member of the Governing Board becomes vacant within 6 months before the end of the term of the office, the office may be left vacant for the remainder of the term.
- (4) A member of the Governing Board may resign from office by delivering a signed letter of resignation to the Minister.
- (5) The Governor in Council, on the recommendation of the Minister, may remove a member of the Governing Board from office—

- (a) if that member becomes incapable of performing the member's duties; or
- (b) if the member is negligent in the performance of those duties; or
- (c) if the member engages in improper conduct; or
- (d) if the member fails to disclose a pecuniary interest as required by section 18; or
- (e) if the member is convicted or found guilty of an offence against this Act or the **Environment Protection Act 1970**; or
- (f) if the member is no longer suitable to hold office as a member of the Governing Board.

14 Acting appointments

- (1) The deputy Chairperson must act as Chairperson—
 - (a) if the office of Chairperson is vacant; or
 - (b) during any period when the Chairperson is absent; or
 - (c) if the Chairperson is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.
- (2) While the deputy Chairperson is acting as Chairperson, the deputy Chairperson—
 - (a) has and may exercise all the powers, and must perform all the duties and functions, of the Chairperson; and
 - (b) is entitled to be paid the remuneration and allowances to which the Chairperson would have been entitled.

- (3) The Governor in Council, on the recommendation of the Minister, may appoint a member of the Governing Board to act as deputy Chairperson—
- (a) during a vacancy in the office of deputy Chairperson; or
 - (b) during any period when the deputy Chairperson is absent; or
 - (c) during any period when the deputy Chairperson is acting as Chairperson; or
 - (d) if the deputy Chairperson is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.
- (4) While a member of the Governing Board is acting as deputy Chairperson, the member has and may exercise all the powers, and must perform all the duties and functions, of the deputy Chairperson.
- (5) The Governor in Council, on the recommendation of the Minister, may appoint a person to act as a member of the Governing Board (other than the Chairperson or deputy Chairperson)—
- (a) during a vacancy in the office of a member; or
 - (b) during any period when a member is absent; or
 - (c) during any period when a member is acting as deputy Chairperson; or
 - (d) if a member is, for any other reason, unable to attend meetings of the Governing Board or otherwise unable to perform the duties of the office.

- (6) While a person is acting as a member of the Governing Board, the person—
- (a) has and may exercise all the powers, and must perform all the duties and functions, of a member; and
 - (b) is entitled to be paid the remuneration and allowances to which the member would have been entitled.
- (7) In recommending a person for an appointment under subsection (5), the Minister must ensure that the recommended person, together with the members of the Governing Board, collectively have skills, knowledge or experience in relation to the following—
- (a) environment protection or regulation;
 - (b) regulation of industry;
 - (c) local government;
 - (d) public administration or governance;
 - (e) finance or accounting;
 - (f) legal practice.
- (8) In recommending a person for an appointment under subsection (5), the Minister must ensure that, of the members of the Governing Board and the recommended person—
- (a) at least one has qualifications or experience in science or engineering; and
 - (b) at least one is a person nominated by the Minister responsible for the administration of the **Public Health and Wellbeing Act 2008** who has qualifications or experience in health.

15 Validity of acts or decisions

An act or a decision of the Governing Board is not invalid by reason only of—

- (a) any vacancy in the office of a member; or
- (b) any defect or irregularity in or in connection with the appointment of a member.

16 Proceedings of the Governing Board

- (1) Meetings of the Governing Board must be held at the times and places determined by the Governing Board.
- (2) A majority of the members of the Governing Board for the time being, of whom one member must be the Chairperson or deputy Chairperson, constitutes a quorum of the Governing Board.
- (3) A question arising at a meeting of the Governing Board must be determined by a majority of votes of members present and voting on the question.
- (4) If the voting is equal, the person presiding has a casting, as well as a deliberative vote.
- (5) A meeting of the Governing Board may be conducted by telephone, closed-circuit television or other means of communication that does not require the physical presence of each member of the Governing Board in the same room.
- (6) The person presiding at a meeting must ensure that minutes of the meeting are kept.
- (7) Subject to this Act, the Governing Board may regulate its own proceedings.

17 Resolutions without meetings

- (1) The Governing Board may—
 - (a) determine that it may make a proposed resolution without a meeting; and

- (b) determine a method by which members of the Governing Board are to indicate agreement with any proposed resolution.
- (2) The Governing Board is taken to have made a resolution at a meeting if—
- (a) without meeting, a majority of the members of the Governing Board entitled to vote on the proposed resolution indicate agreement with the resolution; and
 - (b) that agreement is indicated in accordance with the method determined by the Governing Board under subsection (1)(b); and
 - (c) all the members were informed of the proposed resolution, or reasonable efforts were made to inform the members of the proposed resolution.
- (3) For the purposes of subsection (2)(a), a member of the Governing Board is not entitled to vote on a proposed resolution if the member would not have been entitled to vote on that resolution if the matter had been considered at a meeting of the Governing Board.
- (4) The Governing Board must keep a record of the resolutions made in accordance with this section.

18 Pecuniary interests of members of the Governing Board

- (1) A member of the Governing Board who has a pecuniary interest in a matter being considered or to be considered by the Governing Board, as soon as practicable after the relevant facts have come to the member's knowledge, must disclose the nature of that interest at a meeting of the Governing Board.

Penalty: 60 penalty units.

- (2) If the Chairperson has a pecuniary interest in a matter being considered or to be considered by the Governing Board, the Chairperson, as soon as practicable after the relevant facts come to the Chairperson's knowledge, must disclose the nature of that interest to the Minister.

Penalty: 60 penalty units.

- (3) The person presiding at a meeting at which a disclosure is made under this section must cause a record of the disclosure to be made in the minutes of the meeting.

- (4) Subject to subsection (5), a member of the Governing Board who has made a disclosure under subsection (1) or (2) must not be present during any deliberation with respect to, or vote on, the matter in respect of which the disclosure is made.

Penalty: 60 penalty units.

- (5) Subsection (4) does not apply if a member has made a disclosure to the Governing Board and the Governing Board resolves that the member may be present during any deliberation with respect to, or vote on, the matter in respect of which the disclosure is made.

19 Improper use of information

A person who is, or has been, a member of the Governing Board, the chief executive officer, an authorised officer or an employee of the Authority must not make improper use of any information acquired in the course of the person's duties to obtain, directly or indirectly, any pecuniary or other advantage for that person or for any other person.

Penalty: 60 penalty units.

20 Governing Board may establish advisory committees

- (1) The Governing Board may establish committees for the purpose of providing advice and information to assist the Governing Board in the performance of its functions.
- (2) The Governing Board may determine—
 - (a) the process for establishing an advisory committee; and
 - (b) the terms of reference for an advisory committee; and
 - (c) matters relating to the procedure of an advisory committee; and
 - (d) the terms and conditions of the appointment of members of an advisory committee.
- (3) The Governing Board may appoint any person to be a member of an advisory committee.
- (4) A member of an advisory committee must be paid any allowances and expenses that are determined by the Governing Board.

21 Chief executive officer

- (1) The Governing Board must appoint a person to be the chief executive officer of the Authority.
- (2) The chief executive officer—
 - (a) must not be a member of the Governing Board; and
 - (b) may attend meetings of the Governing Board.
- (3) The chief executive officer is employed subject to terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.

- (4) Subject to and in accordance with directions given to the chief executive officer by the Governing Board for the purposes of section 10(1)(a), the chief executive officer is responsible to the Governing Board for the administration of the day to day management of the affairs of the Authority.
- (5) The chief executive officer may delegate any power or function of the chief executive officer under this Act or the regulations, other than this power of delegation, to—
 - (a) an officer or employee of the Authority; or
 - (b) the holder of an office or position with the Authority.

22 Chief environmental scientist

- (1) The Governing Board must appoint a person to be the chief environmental scientist of the Authority.
- (2) The person appointed as the chief environmental scientist is employed under Part 3 of the **Public Administration Act 2004**.
- (3) Subject to and in accordance with the directions given to the chief environmental scientist by the chief executive officer, the chief environmental scientist is responsible for the provision of advice to the Authority relating to—
 - (a) the objective of the Authority set out in section 6; or
 - (b) the duties and functions of the Authority.

Part 3—General and transitional provisions

23 Application of the Public Administration Act 2004

The Public Administration Act 2004

applies to the Authority as if the Authority was a public entity, but not a small entity, within the meaning of that Act, established on or after the commencement of Part 5 of that Act.

24 Remuneration and expenses

The remuneration and expenses of the members of the Governing Board, members of advisory committees, the chief executive officer and the chief environmental scientist and all other expenses lawfully incurred by the Authority and the Governing Board under this Act and the **Environment Protection Act 1970** are to be paid out of the Environment Protection Fund established under section 70 of the **Environment Protection Act 1970** and moneys provided by Parliament for the purpose.

25 Transitional provisions—Board and offices

On the commencement day—

- (a) the Environment Protection Board under section 8(1) of the **Environment Protection Act 1970** as in force immediately before the commencement day is abolished and any person appointed as a member of that Board ceases to hold office; and
- (b) the office of Chairman under section 6(1) of the **Environment Protection Act 1970** as in force immediately before the commencement day is abolished and any person appointed as Chairman ceases to hold office; and
- (c) the office of Deputy Chairman under section 6(2) of the **Environment Protection Act 1970** as in force immediately before the

commencement day is abolished and any person appointed as Deputy Chairman ceases to hold office.

26 Transitional provisions—employees

On the commencement day, a person who is an employee of the Administrative Office of the Environment Protection Authority established by the Order in Council made under the **Public Administration Act 2004** published in the Government Gazette No. G 13 of 2005 on page 633 immediately before the commencement day is to be regarded as—

- (a) employed under section 8(1) by the Authority as continued under section 5; and
- (b) having been so employed on terms and conditions of employment that are no less favourable overall than those that applied to the person immediately before the commencement day; and
- (c) having accrued an entitlement to benefits in connection with that employment that is equivalent to the entitlement that the person had accrued as an employee of the Administrative Office of the Environment Protection Authority immediately before the commencement day.

Part 4—Consequential amendments

Division 1—Amendment of the Environment Protection Act 1970

27 Definitions

- (1) In section 4(1) of the **Environment Protection Act 1970**, the definition of *Authority* is **repealed**.
- (2) In section 4(1) of the **Environment Protection Act 1970**, the definition of *Chairman* is **repealed**.
- (3) At the end of section 4(1) of the **Environment Protection Act 1970** insert the following note—

"Note

The provisions of the **Environment Protection Act 2017**, including the definitions in section 3(1) of that Act, are to be read as if they formed part of this Act (see section 4(1) of the **Environment Protection Act 2017**)."

28 Repeal of sections 5 to 11

Sections 5, 6, 7, 8, 9, 10 and 11 of the **Environment Protection Act 1970** are **repealed**.

29 Repeal of sections 14 and 15

Sections 14 and 15 of the **Environment Protection Act 1970** are **repealed**.

30 Works approval

- (1) For section 19B(3)(a)(ii) of the **Environment Protection Act 1970** substitute—
 - "(ii) if the Authority considers that the application is a significant works approval application, the Secretary to the Department of Health and Human Services; and"

(2) After section 19B(8) of the **Environment Protection Act 1970** insert—

"(9) In this section—

significant works approval application

means an application for a works approval that is reasonably likely to have significant implications for public health that meets the criteria specified by the Minister for the purposes of this section in a determination published in the Government Gazette."

31 Licensing of certain premises

For section 20(8)(a)(ii) of the **Environment Protection Act 1970** substitute—

"(ii) if the Authority considers that the application, if it had been made under section 19B, would have been a significant works approval application within the meaning of that section, the Secretary to the Department of Health and Human Services; and"

32 Amendment of licence

For section 20A(6)(a)(ii) of the **Environment Protection Act 1970** substitute—

"(ii) if the Authority considers that the application, if it had been made under section 19B, would have been a significant works approval application within the meaning of that section, the Secretary to the Department of Health and Human Services; and"

33 Conferences

In section 20B(3) of the **Environment Protection Act 1970**, for "Chairman" (where twice occurring) substitute "chief executive officer".

34 Consideration of policy

After section 20C(3)(a)(iii) of the **Environment Protection Act 1970** insert—

"(iv) be likely to endanger public health; or".

35 Consultation during preparation of State-Wide Waste and Resource Recovery Infrastructure Plan

In section 50AC(d) of the **Environment Protection Act 1970**, for "Chairman" substitute "Chairperson".

36 Consultation during preparation of Regional Waste and Resource Recovery Implementation Plans

In section 50BC(b) of the **Environment Protection Act 1970**, for "Chairman" substitute "Chairperson".

37 Mandatory notification of corrupt conduct to IBAC

- (1) In section 54C(1) of the **Environment Protection Act 1970**, for "Chairman" (wherever occurring) substitute "Chairperson".
- (2) In section 54C(4) of the **Environment Protection Act 1970**, for "Chairman" (where twice occurring) substitute "Chairperson".

38 Consultation prior to notification

In section 54D of the **Environment Protection Act 1970**, for "Chairman" substitute "Chairperson".

39 Communication of information to the IBAC

In section 54E(1) of the **Environment Protection Act 1970**, for "Chairman" (where twice occurring) substitute "Chairperson".

40 Execution of documents by Authority

- (1) In section 59AA(1) of the **Environment Protection Act 1970**, for "Chairman" (wherever occurring) **substitute** "Chairperson".
- (2) In section 59AA(3)(a)(i) of the **Environment Protection Act 1970**, for "Chairman" **substitute** "Chairperson".

41 Disclosure of information an offence

- (1) In section 60(1) of the **Environment Protection Act 1970**, after "this Act" **insert** "or the **Environment Protection Act 2017**".
- (2) In section 60(3)(a) of the **Environment Protection Act 1970**, after "this Act" **insert** "or the **Environment Protection Act 2017**".

42 Delegation

- (1) For section 68(1) of the **Environment Protection Act 1970 substitute**—
 - "(1) The Governing Board may by instrument in writing delegate to protection agencies all or any of the Authority's powers and functions under this Act or the **Environment Protection Act 2017** so that the delegated powers may be exercised by the delegate but no such delegation precludes the Authority from acting or relieves the Authority of any responsibility for protecting the environment and administering this Act or the **Environment Protection Act 2017**."
- (2) In section 68(3) of the **Environment Protection Act 1970**, for "Authority" **substitute** "Governing Board".

(3) In section 68(4) of the **Environment Protection Act 1970**—

- (a) for "Authority" **substitute** "Governing Board";
- (b) for "its powers" **substitute** "the Authority's powers".

43 Power to delegate

(1) For section 68A(1) of the **Environment Protection Act 1970** **substitute**—

"(1) The Governing Board may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to an officer or employee of or the holder of an office or position with the Authority all or any of the Authority's or the Governing Board's powers and functions under this Act, the **Environment Protection Act 2017** or any other Act other than this power of delegation."

(2) In section 68A(2) of the **Environment Protection Act 1970** **omit** "under seal".

(3) After section 68A(2) of the **Environment Protection Act 1970** **insert**—

"(3) If the Governing Board delegates a power or function to the chief executive officer under subsection (1), the chief executive officer may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate all or any of the delegated powers and functions to—

- (a) an officer or employee of the Authority;
or
- (b) the holder of an office or position with the Authority."

44 Provisions applicable to delegations

- (1) In section 68B(2) of the **Environment Protection Act 1970**, for "Authority or protection agency" **substitute** "Governing Board, protection agency or chief executive officer".
- (2) In section 68B(3) of the **Environment Protection Act 1970**—
 - (a) for "Authority or protection agency" **substitute** "Governing Board, protection agency or chief executive officer";
 - (b) in paragraph (a), **omit** "under seal".
- (3) In section 68B(4) of the **Environment Protection Act 1970**, for "Authority or a protection agency" **substitute** "Governing Board, a protection agency or the chief executive officer".
- (4) In section 68B(5) of the **Environment Protection Act 1970**—
 - (a) for "Authority or a protection agency" (where twice occurring) **substitute** "Governing Board, a protection agency or the chief executive officer";
 - (b) after "this Act" **insert** "or the **Environment Protection Act 2017**".
- (5) In section 68B(9) of the **Environment Protection Act 1970**, for "this Act" **substitute** "this Act, the **Environment Protection Act 2017**".
- (6) In section 68B(10) of the **Environment Protection Act 1970**—
 - (a) for "Authority or a protection agency" **substitute** "Governing Board, a protection agency or the chief executive officer";
 - (b) for "Authority or the protection agency" **substitute** "Authority, the protection agency or the chief executive officer".

Division 2—Amendment of the Public Administration Act 2004

45 Persons with functions of public service body Head

After section 16(1)(d) of the **Public Administration Act 2004** insert—

"(e) the Chairperson in relation to the Environment Protection Authority within the meaning of the **Environment Protection Act 2017**;"

Division 3—Repeal of Part 4

46 Repeal of Part 4

This Part is **repealed** on 1 July 2019.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 7 June 2017

Legislative Council: 22 August 2017

The long title for the Bill for this Act was "A Bill for an Act to provide for the continuation of the Environment Protection Authority, to specify a new objective of the Authority, to provide for a new governance structure of the continued Authority, to provide for the Governing Board of the Authority and to make consequential amendments to the **Environment Protection Act 1970** and the **Public Administration Act 2004** and for other purposes."